

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Date: Sept. 6, 2016

LEGEND

X =

Y =

A =

B =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to a letter dated March 8, 2016, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was incorporated in State on Date 1 and elected to be treated as an S corporation effective Date 1. On Date 2, A and B, the

shareholders of X, sold their shares of X stock to Y, a foreign corporation under a purchase agreement. As a result, X's S corporation election terminated on Date 2.

In Date 3, X learned that its S corporation election terminated on Date 2. After learning that X's S corporation election was terminated, X took corrective steps so that on Date 4, A, B and Y rescinded the purchase agreement putting all parties in the same position they occupied prior to the sale on Date 2. Consequently, by Date 4, all of X's shareholders were eligible S corporation shareholders under § 1361(b)(1)(B).

X represents that the termination of X's S corporation election was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Commissioner with respect to the period specified by § 1362(f).

LAW

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) provides, in part, that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the required shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified

pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's S corporation election terminated on Date 2 when shares of X stock were transferred to an ineligible shareholder. However, we conclude that the circumstances resulting in the termination were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation from Date 2 to Date 4, and thereafter provided that X's S corporation election was valid and not otherwise terminated under § 1362(d). Moreover, we rule that during the period from Date 2 to Date 4, A and B will be treated as shareholders of X.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provisions of the Code. Specifically, we express or imply no opinion as to whether X is otherwise eligible to be treated as an S corporation. In addition, we express or imply no opinion on whether the purchase agreement can be rescinded for federal income tax purposes. See § 3.02(8) of Rev. Proc. 2016-3, 2016-1 I.R.B. 126, 133.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy of this letter
Copy for § 6110 purposes